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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
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FIRST GENERAL COUNSEL'S REPORT

CELA

RR 13L-33

DATE OF REFERRAL: 08/08/13

DATE OF NOTIFICATION: 08/14/13, 02/27/14

DATE ACTIVATED: 01/21/14

EXPIRATION OF SOL: 08/28/14-07/15/15

ELECTION CYCLE: 2009-2010

SOURCE:

RAD Referral

RESPONDENTS:

Lynn Jenkins for Congress and Heather Grote
in her official capacity as treasurer

Robert M. Telthorst

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 432(b)(3)

2 U.S.C. § 434(b)

2 U.S.C. § 439a

11 C.F.R. § 104.3(a)(3)

11 C.F.R. § 104.3(b)(2)

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred to the Office of General Counsel Lynn Jenkins for Congress and Heather Grote in her official capacity as treasurer (the "Committee"), the principal campaign committee for Representative Lynn Jenkins, and its former treasurers, Kurt Bossert and Robert M. Telthorst. According to the Referral and the Committee's response, while serving as treasurer in 2009, Telthorst withdrew \$21,300 of the Committee's funds and deposited them into an unauthorized account that he used for personal purposes and failed to disclose the transactions. Referral at 1-2; Committee Resp. at 2.

1 Telthorst ultimately refunded \$21,308.92 from the unauthorized account to the campaign
2 account in April 2010 but the Committee did not report the refund. *Id.*

3 In response to the Referral, the Committee requests that the Commission find no
4 reason to believe it violated the Federal Election Campaign Act of 1971, as amended (the
5 "Act"). Committee Resp. at 1, 4. Telthorst, in his response, requests pre-probable cause
6 conciliation. Telthorst Resp. at 1.

7 Based on the Referral and the Committee's response, we recommend that the
8 Commission assign the Committee to the Office of Alternative Dispute Resolution ("ADR").
9 We also recommend that the Commission open a MUR as to Robert M. Telthorst, find reason
10 to believe that Telthorst knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 434(b), and
11 439a, and enter into pre-probable cause conciliation with him.

12 II. FACTS

13 Lynn Jenkins was a 2010 candidate in Kansas's 2nd Congressional District, and Lynn
14 Jenkins for Congress and Heather Grote in her official capacity as treasurer (the
15 "Committee") was her principal campaign committee.¹ Robert Telthorst was the Committee's
16 treasurer from April 19, 2009 to February 24, 2010.

17 According to the Committee, in the summer of 2009, Telthorst proposed putting
18 approximately \$21,000 of campaign funds in a CD account for the Committee. Committee
19 Resp. at 2. The Committee explains that Patrick Leopold, Rep. Jenkins's chief of staff,
20 approved the proposal believing the CD account would be opened at INTRUST Bank, the
21 existing depository for the Committee. *Id.* Contrary to Leopold's authorization, Telthorst
22 instead opened a checking account at Bank of America under the name "Rob Telthorst d/b/a
23 Lynne Jenkins for Congress," deposited three checks totaling \$21,300 drawn from the

¹ Jenkins won the 2010 election and was re-elected in November 2012. The Committee has continually been Jenkins's principal campaign committee.

1 Committee's INTRUST account, and repeatedly withdrew and returned funds from the Bank
2 of America account for his own purposes. Committee Resp. at 2.

3 The Committee terminated Telthorst in February 2010 for reasons unrelated to his
4 opening and use of the Bank of America checking account, which the Committee was still
5 unaware of at that time. Committee Resp. at 2. In April 2010, the Committee's new
6 treasurer, Kurt Bossert, reportedly learned of the Bank of America account when he found a
7 statement from the account.² *Id.* Leopold questioned Telthorst about the account and
8 Telthorst reportedly stated that he made the transfer in order to get a CD but never completed
9 the transaction; Telthorst also stated that he would close that account.³ *Id.* On April 8, 2010,
10 Telthorst deposited a \$21,308.92 check drawn from an account named "Robert M. Telthorst
11 Sole Prop DBA Lynn Jenkins for Congress" into the Committee's INTRUST account, making
12 the Committee's campaign funds whole. Form 99.

13 In its response to the Referral, the Committee states that it first became fully aware of
14 Telthorst's actions after being contacted by an FBI agent who informed it about the
15 unauthorized activity from the Bank of America account and that Telthorst, who was also a
16 lawyer with a trusts and estates practice, was under investigation for possible

² Bossert was treasurer from February 25, 2010, to May 8, 2013.

³ The Committee's counsel explained how Leopold discovered the Bank of America account, and shared Telthorst's explanation of his withdrawal of money from the Committee's account when he originally contacted OGC by phone in 2011 to alert it to the embezzlement. See E-mail from Michael Columbo, Att'y, FEC, to Mark Allen, Ass't Gen. Counsel, FEC (Sept. 19, 2011, 05:24 EST). This information was not included in the Committee's response to the referral. In that original phone call, the Committee's counsel also indicated that Telthorst told the Committee he was going to transfer \$20,000 of its funds to a CD at a bank that was not the Committee's usual bank. *Id.* However, as noted, the Committee's response states that Leopold approved Telthorst's proposal believing the CD account would be opened at an existing Committee depository. See Committee Resp. at 2.

1 misappropriation of funds from former clients.⁴ Committee Resp. at 2. The Committee, in
2 turn, alerted OGC and its RAD analyst by phone to the unauthorized activity. *Id.*; Form 99.
3 The RAD analyst directed the Committee to the Commission's Policy Regarding Self-
4 Reporting of Campaign Finance Violations ("*Sua Sponte* Policy") and requested that the
5 Committee file a Form 99 to explain the unauthorized activity on the public record. Referral
6 at 1; Referral, Attach. 3 at 1. The analyst also instructed the Committee to disclose the
7 unauthorized disbursements and the subsequent repayment in the appropriate Committee
8 disclosure reports. Referral at 2; Referral, Attach. 3 at 1, 2.

9 The Committee hired an independent auditor who conducted a review of the
10 Committee's books and records during the time Telthorst was treasurer. Committee Resp. at
11 2. The audit confirmed that Telthorst wrote three checks from the Committee's INTRUST
12 account totaling \$21,300 and deposited them into the Bank of America account. Committee
13 Resp. at 2; Referral at 2; Form 99. Of that amount, \$16,800 was disbursed by two checks
14 dated August 28, 2009, to "Lynn Jenkins for Congress CD account," and \$4,500 was
15 disbursed by check dated September 1, 2009, to "Consolidated Lease & Fin 30-Day CD." *Id.*

16 After reviewing the findings of its independent auditor, the Committee filed a Form 99
17 dated January 31, 2013, disclosing the unauthorized activity. *Id.* at 3. To date, the Committee
18 has not yet amended its disclosure reports to reflect Telthorst's withdrawals of the
19 Committee's funds or the refund of them.⁵ See Committee's 2009 October Quarterly Report,

⁴ According to public documents, on November 14, 2012, Telthorst pleaded guilty to wire fraud (18 U.S.C. § 1343) and money laundering (18 U.S.C. § 1956), and was sentenced to 60 months in prison and ordered to pay \$537,680 in restitution. See generally *United States v. Robert M. Telthorst*, 12-cr-40108 (D.C. Kan. 2012). He is currently serving his sentence in a federal prison in Oklahoma.

⁵ According to the Referral, in a telephone conversation with the Committee's RAD analyst on July 3, 2013, Leopard "indicated that the Committee had been instructed by OGC to provide information related to unauthorized transactions made with Committee funds on a Form 99 because the alleged embezzlement activity appeared to be limited to transfers between Committee accounts." Referral at 2, see also Referral, Attach. 3 at 3. We have no records or other information indicating that OGC so instructed the Committee.

1 Committee's 2010 July Quarterly Report. The Committee argues that the Commission should
2 take no action against it, citing the Commission's *Sua Sponte* Policy⁶ and the following
3 factors: (1) the Committee investigated and voluntarily disclosed Telthorst's actions
4 immediately upon learning of his activity; (2) the Committee engaged an independent auditor
5 to determine the scope of the activity;⁷ (3) Telthorst acted on his own and concealed both the
6 unauthorized account and his unauthorized withdrawals from the Committee; (4) Telthorst
7 benefited only himself, not the Committee; and (5) the amount of funds involved was
8 relatively immaterial. Committee Resp. at 3. The Committee further argues that penalizing it
9 would not serve the interests of justice and would discourage others from voluntarily
10 investigating and disclosing unauthorized activity. *Id.* Thus, the Committee requests that the
11 Commission find no reason to believe it violated the Act. Committee Resp. at 4.

12 Telthorst does not dispute any information contained in the Referral, which he states
13 contains "a straightforward set of facts." Telthorst Resp. at 1. He requests to enter into
14 conciliation prior to a finding of probable cause to believe a violation has been committed.
15 *Id.*

⁶ We note that in October 2011, when the Committee first contacted RAD, the Committee's counsel told RAD that it was working with OGC to file a *sua sponte* submission. Referral at 2. The Committee, however, never submitted a *sua sponte* submission to the Commission.

⁷ The Committee did not submit a copy of the independent auditor's findings.

1 **III. LEGAL ANALYSIS**

2 Under the Act, a committee, through its treasurer, is required to keep an accurate
3 account of and disclose its receipts, disbursements, and cash-on-hand balances. *See* 2 U.S.C.
4 §§ 432(c), 434(b); 11 C.F.R. §§ 104.3, 104.14(d). Committees are required to file reports
5 with the Commission through their treasurers disclosing, among other things, the amount of
6 cash on hand at the beginning of the reporting period and the total amount of disbursements,
7 including the name and address of each person to whom an expenditure exceeding \$200 is
8 made together with the date, amount, and purpose of the expenditure. *See* 2 U.S.C.
9 § 434(b)(1), (2), (4)(G), (5), (6)(A). The Act and Commission regulations prohibit any person
10 from converting contributions to a federal candidate to personal use, 2 U.S.C. § 439a(b)(1),
11 and further require that all funds of a political committee be "segregated from, and may not be
12 commingled with, the personal funds of any individual."⁸ *Id.* § 432(b)(3); 11 C.F.R.
13 § 102.15.

14 In 2007, the Commission established a safe harbor to benefit committees that file
15 inaccurate reports because their funds were unknowingly misappropriated by committee
16 fiduciaries and staff. *See* Statement of Policy: Safe Harbor for Misreporting Due to
17 Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("Safe Harbor").⁹ In the Safe Harbor
18 Policy, the Commission stated that it would not seek a monetary penalty from a committee for
19 filing inaccurate reports due to embezzlement if the committee had certain minimal internal
20 controls in place at the time of the embezzlement and the committee took certain steps after

⁸ A contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of federal office. 2 U.S.C. § 439a(b)(2).

⁹ In addition to the Safe Harbor Policy, the Commission has also provided guidance concerning internal controls "intended to assist committees in protecting their assets and complying with the requirements of the FECA." *See* Internal Controls for Political Committees, available at http://www.fcc.gov/law/policy/guidance/internal_controls_polcintes_07.pdf.

1 discovering the embezzlement. *Id.* The Commission has concluded that those internal
2 controls and post-discovery steps "represent the *minimum* efforts a committee must take to
3 qualify for this safe harbor." *Id.* (emphasis added). But the Commission will consider "the
4 presence of some but not all" of the enumerated controls and post-discovery activities as
5 mitigating factors in considering the appropriate civil penalty to assess against a committee
6 that fails to qualify for the protection of the safe harbor.¹⁰ *Id.*

7 The internal controls set out in the policy include: (1) opening all bank accounts in the
8 name of the committee using its Employer Identification Number; (2) reviewing monthly
9 bank statements for unauthorized transactions and reconciling the statements by someone
10 other than the individual with check-signing authority or who has responsibility for the
11 committee's accounting; (3) dual-signing authority for checks over \$1,000; (4) having in
12 place procedures for handling incoming receipts by someone other than the individuals with
13 accounting or banking authority; and (5) maintaining safeguards for managing a petty cash
14 account. Further, for cover under the Safe Harbor Policy, when a committee discovers
15 misappropriation of funds, it must notify the Commission and the relevant law enforcement
16 authority and promptly amend its disclosure reports to correct errors. *See Safe Harbor*, 72
17 Fed. Reg. at 16,695.

¹⁰ When determining committee liability in cases of embezzlement, the Commission often has examined whether the embezzlement resulted in part from the committee's failure to implement adequate internal controls over its finances (*e.g.*, regular audits, controls, procedures over receipts and disbursements, and periodic review of finances). *See, e.g.*, Pre-MUR 526 (Geoff Davis for Congress); Pre-MUR 524 (Official 12th Dist Dem Party); Pre-MUR 521 (LoBiondo for Congress); MUR 5923 (Am. Dream PAC); MUR 5920 (Women's Campaign Fund); MUR 5872 (Jane Hague for Cong.); MUR 5811 (Doggett for U.S. Cong.); MUR 5812 (Ohio State Med. Ass'n PAC); MUR 5813 (Georgia Med. PAC); MUR 5814 (Lamutt for Cong.); MUR 5721 (Lockheed Martin Emp.'s PAC); MUR 5610 (Haywood/Dole).

1 A. The Committee

2 Although Telthorst was authorized to place approximately \$21,000 in a CD for the
3 benefit of the Committee, he withdrew Committee funds and placed them in an unauthorized
4 checking account from which he reportedly withdrew and deposited funds for his personal
5 use. He concealed the account and did not reflect the withdrawals in the Committee's
6 disclosure reports while he was treasurer.

7 It appears that the Committee does not qualify for the Commission's Safe Harbor
8 Policy, both because its internal controls were weak and because it was slow to make public
9 disclosure of the unauthorized financial activity. When the Committee discovered the Bank
10 of America account in April 2010, Telthorst reportedly said he would close it. It does not
11 appear that the Committee took any steps in 2010 to examine the nature and contents of the
12 account, which was not a CD account, had been opened in Telthorst's name, and had been used
13 by him for personal purposes.

14 The Committee did not discuss its internal controls in its response, but it apparently
15 neglected to reconcile its disclosure reports against its financial records. Had it done so, it
16 would have discovered the discrepancy in the Committee's cash-on-hand figure in 2009 when
17 the withdrawn funds were not placed in a Committee account. Only after the FBI notified the
18 Committee in September 2011 that Telthorst was being investigated for misappropriating
19 funds from clients, had not opened a CD account, had opened an account at the Bank of
20 America in his own name d/b/a Lynn Jenkins for Congress, and had deposited three checks
21 totaling \$21,300 from the Committee's INTRUST account into the Bank of America account,
22 did the Committee notify RAD and OGC of the problem. Committee Resp. at 2. At that
23 time, a RAD analyst directed the Committee to the *Sua Sponte Policy*, told it to file a Form
24 99, and specified how to report the unauthorized disbursements and their repayment on the

1 appropriate disclosure reports. Referral at 2; Referral, Attach. 3 at 1, 2. Also at that time, the
2 Committee indicated that it was working with OGC to file a *sua sponte* submission. Referral
3 at 2; Referral, Attach. 3 at 2. The Committee, however, did not contact OGC following its
4 original phone call, never filed a *sua sponte* submission, did not file a Form 99 until January
5 2013 (almost a year and a half later), and has yet to amend its disclosure reports.

6 In the most recent embezzlement cases similar in amount, duration of activity, and
7 lack of remedial measures, the Commission has assigned the committees to ADR. For
8 example, in Pre-MUR 524 (Official 12th Dist Dem Party), the Commission assigned the
9 committee to ADR for reporting violations stemming from its former treasurer's
10 embezzlement of \$14,500 over the course of a year, where the committee had not
11 implemented sufficient safeguards to prevent future unauthorized activity. See Certification
12 for Pre-MUR 524 (Dec. 19, 2013); First Gen. Counsel's Rpt. at 7-8, Pre-MUR 524 (Official
13 12th Dist Dem Party). The Commission also assigned to ADR the Geoff Davis for Congress
14 committee for reporting violations associated with its former treasurer's embezzlement of
15 \$7,343.03 over fourteen months, and unrelated reporting violations, where the need to educate
16 the committee on implementing measures to avoid a recurrence was apparent. See
17 Certification for Pre-MUR 526 (Mar. 12, 2012); First Gen. Counsel's Rpt. at 11-12, Pre-MUR
18 526 (Geoff Davis for Congress).¹¹

¹¹ See also RR 12L-42, *et al.* (Los Angeles Democratic Co. Central Committee, *et al.*), RR 12L-31, *et al.* (Richardson for Congress, *et al.*), and Pre-MUR 521 (LoBiondo for Congress) (assigning committees to ADR in matters mostly involving substantially greater amounts and duration of embezzlement activity, where committees had hired and relied on a professional treasurer to do their reporting and accounting); MUR 5933 (Indiana Democratic Cong. Victory Comm.) (assigning committee to ADR for reporting violations stemming from embezzlement of approximately \$70,000 of committee funds over the course of two years); Pre-MUR 483 (Christopher Shays for Cong. Comm.) (assigning the committee to ADR for reporting violations stemming from embezzlement of approximately \$150,000 of committee funds over the course of two years); RR 08L-14 (San Antonio Police Officers' Ass'n. PAC) (assigning committee to ADR for misreporting \$62,400 in embezzlement over the course of two years).

1 Here, the Committee does not indicate what, if any, safeguards it had in place at the
2 time of the misappropriation of \$21,300 over nine months. Nor does it indicate that it has
3 implemented new safeguards to prevent misappropriations in the future. Further, although
4 the Committee filed a Form 99 addressing the unauthorized activity, albeit in an untimely
5 manner, it has not filed amended reports to reflect the withdrawal and return of the
6 misappropriated funds. Assignment to ADR is appropriate under these circumstances as it
7 can educate the Committee and help it implement safeguards to lessen the opportunities for
8 future unauthorized activity and provide guidance regarding properly amending its
9 disclosure reports.¹² Accordingly, we recommend that the Commission assign the
10 Committee to ADR.

11 B. Robert M. Telthorst

12 According to the Commission's *Statement of Policy Regarding Treasurers Subject to*
13 *Enforcement Proceedings*, a former treasurer may be named as a respondent in his or her
14 personal capacity when it appears that the treasurer may have violated obligations imposed by
15 the Act or Commission regulations and where the violation was knowing and willful. 70 Fed.
16 Reg. 3, 5 (Jan. 3, 2005); see MUR 6768 (Debra Doherty); MUR 6597 (Kinde Durkee); MUR
17 6539 (Joe Green); MUR 6475 (Andrew McCrosson); MUR 6179 (Christopher Ward); MUR
18 5971 (Jennifer Adams); MUR 5721/5772 (Kenneth Phelps); MUR 5610 (Earl Allen
19 Haywood). A violation is knowing and willful where the unlawful "acts were committed with
20 full knowledge of all the relevant facts and a recognition that the action is prohibited by law."
21 122 Cong. Rec. 12197, 12199 (May 3, 1976). It is undisputed that, while serving as treasurer
22 of the Committee, Telthorst made three withdrawals of Committee funds totaling \$21,300,
23 which he deposited in an account under his control outside of the Committee's depository

¹² See *supra* note 11.

1 bank, and did not disclose the withdrawals on reports filed with the Commission. His failure
2 to report the withdrawals is evidence that he knew he was not authorized to make withdrawals
3 of the Committee's funds for a personal account, and needed to hide these withdrawals. We
4 therefore conclude that Telthorst knowingly and willfully violated 2 U.S.C. § 434(b) by
5 failing to file accurate reports with the Commission.

6 We also conclude that Telthorst knowingly and willfully violated 2 U.S.C. § 439a by
7 converting campaign funds to personal use. It is undisputed that Telthorst deposited the
8 \$21,300 in Committee funds into an account that he opened in his own name, as a sole
9 proprietor doing business as Lynn Jenkins for Congress; and, according to the Committee, the
10 FBI advised it that Telthorst repeatedly withdrew and returned funds from that account for his
11 own purposes. That Telthorst kept the account a secret from the Committee is evidence that
12 he knew he was acting illegally.

13 In addition, by depositing campaign funds into an account held by him personally, *i.e.*,
14 "Robert M. Telthorst Sole Prop DBA Lynn Jenkins for Congress," and subsequently
15 withdrawing and depositing funds into that account for personal purposes, Telthorst also
16 knowingly and willfully mixed Committee funds with personal funds in violation of the Act's
17 prohibition against commingling "funds of a political committee . . . with[] the personal funds
18 of any individual." 2 U.S.C. § 432(b)(3); *see* MUR 6768 (Debra Doherty) and MUR 6526
19 (Cora Carper) (finding reason to believe that respondents knowingly and willfully violated
20 section 432(b)(3) where they made cash deposits into personal bank accounts after cashing
21 unauthorized committee checks).

1 Accordingly, we recommend that the Commission open a MUR as to Telthorst, find
2 reason to believe that he knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 434(b), and
3 439a, and enter into pre-probable cause conciliation with him.¹³

13 We did not notify, and make no recommendation with respect to Kurt Bossert, who succeeded Telthorst as treasurer, but is not the current treasurer. Bossert was treasurer on April 8, 2010, when Telthorst deposited a check into the Committee's account for \$21,308.92, repaying the funds he had previously withdrawn. *See* Committee Resp. at 2. While the Committee could have pursued the circumstances of the creation and content of the Bank of America account more vigorously, there is no information indicating that Bossert's failure to do so or failure to report timely the repayment was knowing and willful or reckless. Therefore, unlike Telthorst, Bossert should not be pursued in his personal capacity, and since he is no longer treasurer of the Committee, should not be pursued in any capacity.

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V. RECOMMENDATIONS

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1. Assign RR 13L-33 concerning Lynn Jenkins for Congress and Heather Grote in her official capacity as treasurer to the Office of Alternative Dispute Resolution;

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2. Open a MUR as to Robert M. Telthorst;

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3. Find reason to believe that Robert M. Telthorst knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 434(b), and 439a;

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4. Enter into conciliation with Robert M. Telthorst prior to a finding of probable cause to believe;

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5. Approve the attached Factual and Legal Analysis for Robert M. Telthorst;

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6. . . .

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7. Approve the appropriate letter.

4-21-14

Date

By:

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